Supreme Court, U. S.
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in the

Supreme Court of the United States

October Term, 1976

NO. 75-1542

FRANCES OWEN WARRINER,
a/k/a FRANCES O. WARRINER,

Petitioner,

vs.

MARILYN FERNANDEZ, an alleged free dealer, formerly known as MARILYN KAY THAL, a free dealer, and as the wife of PAUL GOODLEMAN, SAM BERGER, BEN GOULD, SIDNEY THAL, and MARIO R. FERNANDEZ, individually, and as Administratrix, C. T. A. of the Estate of SAM KAY, and as the last officer and director of the dissolved Florida corporations LOAN STAR, INC., and PUBLIC INVESTMENT CORPORATION, INC.; and MARIO R. FERNANDEZ individually and as the husband of MARILYN FERNANDEZ; and MORRIS FOX, and his wife, JEAN FOX; and TITLE GUARANTEE COMPANY OF BALTIMORE, MARYLAND, licensed and organized to do business in the State of Florida,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

FRANCES OWEN WARRINER, pro se
2735 S.W. 10th Terrace, Apt. #3,
Miami, Florida 33135
In Proper Person, For Petitioner.

MIAMI REVIEW — 371-4855 — 377-3721

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NO._____

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Petitioner,

vs.

MARILYN FERNANDEZ, an alleged free dealer, formerly known as MARILYN KAY THAL, a free dealer, and as the wife of PAUL GOODLEMAN, SAM BERGER, BEN GOULD, SIDNEY THAL, and MARIO R. FERNANDEZ, individually, and as Administratrix, C. T. A. of the Estate of SAM KAY, and as the last officer and director of the dissolved Florida corporations LOAN STAR, INC., and PUBLIC INVESTMENT CORPORATION, INC.; and MARIO R. FERNANDEZ, individually and as the husband of MARILYN FERNANDEZ; and MORRIS FOX, and his wife, JEAN FOX; and TITLE GUARANTEE COMPANY OF BALTIMORE, MARYLAND, licensed and organized to do business in the State of Florida,

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OPINIONS BELOW

The opinion in the Supreme Court of Florida, and the order of the Supreme Court of Florida upon denial of the petition for rehearing, clarification of opinion and suggestion for rehearing *en banc*, (Appendix 1-2) is not yet reported. The decision of the District Court of Appeal, Third District of Florida, (Appendix 3-6) is reported at 310 So.2d 375, (Fla.App. 1975). The decision and order of the Circuit Court of the Sixteenth Judicial Circuit of the State of Florida, in and for Monroe County, is at Appendix 7-11; and the Initial Decision of the United States Court of Appeals, Fifth Circuit, and Judgment, reported in 307 F.2d 933 (1962), is also appended.

JURISDICTION

The Judgment of the Supreme Court of Florida was entered October 30, 1975. Timely petition for rehearing, clarification of opinion and suggestion for rehearing *en banc*, were denied January 28, 1976. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1), and 28 U.S.C. §1257(3).

QUESTION PRESENTED

A divided Court below,[1] ignoring the guarantees of the individual rights, privileges and immunities under the Constitution of the United States has by the persuasion of "Comity", and its interpretation as to the finality of State Court judgment, pre-empted jurisdiction of State and Federal Court, for relief from fraudulent, unalterably void

[1]The Court of Appeals' original decision was 2-1, and appears in Appendix 14-21.

judgment, without the intervention of this Supreme Court by Writ of Certiorari. The important question presented is whether the decision, and resulting decisions so far depart from the accepted course of judicial proceedings and controlling decisions of this Supreme Court so as to warrant review, particularly since the void judgment, obtained by fraud upon the court, and rendered without jurisdiction, deprives petitioner of clear title to her properties, without an opportunity to appear or be heard *before* her rights were taken away, and given to a person to whom she was not indebted, and who had no standing before the said Court; and if left unchecked, may result in similar abuses, and extensive substantial loss, and be a mockery of our revered Constitution of the United States of America.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Constitution of the United States

Article III, Section 2:

> "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;...."

Article IV, Sections 1 & 2:

> "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

"The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

Article VI:

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

". . . and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; . . ."

Amendment V.

"No person shall . . . be deprived of life, liberty, or property, without due process of law; . . ."

Amendment VII:

"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by Jury shall be preserved . . ."

Amendment XIV, Section 1:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the

United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Civil Rights

Title 42 United States Code §1983, Civil Action for the deprivation of rights:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State or Territory subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

Title 42 United States Code §1985, Conspiracy to interfere with civil rights—Preventing officer from performing duties—Depriving persons of rights or privileges:

"(3) If two or more persons in any State or Territory conspire . . . for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; . . . in any case of conspiracy set forth in this section, if one or more persons en-

gaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators."

STATEMENT

This action was brought to review the final orders of the Florida Supreme Court and its refusal of relief from, and redress for, the recurring damage and deprivation of rights, resulting from an insidious conspiracy and sophisticated scheme put into effect to deprive petitioner of title to her very valuable properties, under pretense of law, *by a fraudulent "Final Decree of Foreclosure", rendered without jurisdiction, without due process of law, without evidence, without proof of the ownership of note or mortgage; without the production of the note sued upon, or even so much as an affidavit of indebtedness.* This was accomplished by using the United States Mails to defraud, by letter, enclosing an unauthorized "*Stipulation*" and a prepared "*Final Decree of Foreclosure*", to be entered by the Court.

The Factual Background

On October 26, 1950, HAROLD KASSEWITZ filed Bill to Foreclose Mortgage, for HARRY FINK, Plaintiff, who claimed *falsely* therein, to be the owner of the *note* sued upon. Answer for FRANCES O. WARRINER, Defendant, was prepared by B. R. CISCO, denying the debt

and all other material allegations, which was timely filed November 28, 1950. On Friday, December 29, 1950, then JUDGE AQUILINO LOPEZ, JR., entered and filed the "*Final Decree of Foreclosure*", together with the unauthorized "*Stipulation*",[2] executed *only* by the attorneys, *without notice or hearing*.

Petitioner on learning of this outrage, fired B. R. CISCO, and employed LELAND HYZER, who filed her MOTION TO SET ASIDE FINAL DECREE AND MASTER'S SALE, *which was under oath, and repudiated the unauthorized stipulation, entered without her knowledge, consent or approval; and requested an opportunity to present her defense.*[3]

JUDGE AQUILINO LOPEZ, JR., then *knowingly* deprived her of her guaranteed rights under Amendments V and XIV of the Constitution of the United States of America.

Interlocutory Appeal was timely filed, and dismissed on motion of HARRY FINK of false statements.

"ORDER CONFIRMING SALE", which included a deficiency decree in the amount of $6,951.52, was rendered *surreptiously, without notice or hearing;* and *right to redeem denied.*

Petitioner at all times had a *meritorious* defense of usury and failure of consideration.

Successive Suits for relief, in State and Federal Courts, at all levels, were with repeated regularity dis-

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[2]See Certificate of the Clerk, Appendix 12-13.

[3]Armstrong v. Manzo, 380 U. S. 552 (1965); Grannis v. Ordean, 234 U.S. 385.

missed, quashed, or denied jurisdiction or certiorari, without any consideration on the "*merits*" whatsoever.

The New Beginning

On or about December 15, 1966, HAROLD KASSEWITZ, finally produced the Original "NOTE", for the first time, in his office, for FRANCES OWEN WARRINER to see, at which time he made and gave to her a true copy of both the *FRONT AND BACK* of said "NOTE", a Xerox copy, *which shows without question, that HARRY FINK was NEVER the owner of the note sued upon by him, he was NOT the real party in interest, the Monroe County Circuit Court had NO jurisdiction, and its decree and orders were VOID, unequivocally void, of no force or effect, incapable of cure or ratification or enforcement.*

MARILYN KAY, now known as MARILYN FERNANDEZ, had retained her ownership of the "NOTE", executed in connection with the mortgage on the Subject Properties, which had been endorsed over to her, as planned, by HENRY H. HERMAN, an associate of her father, SAM KAY, in these words:

> "Pay to the order of Marilyn Kay, without recourse."
>
> /s/ HENRY H. HERMAN

No other endorsement appears thereon!!!

HAROLD KASSEWITZ agreed to obtain a Quit Claim Deed from HARRY FINK to petitioner, but later refused to do so.

Without delay, on December 23, 1966, petitioner recorded in the Official Records of Monroe County her "NOTICE" and "WARRANTY DEED", from FRANCES O. WARRINER to FRANCES OWEN WARRINER; which advised, apprised and notified all persons, whomsoever, that the Final Decree of Foreclosure, so rendered, was VOID, of no force or effect; and that all deeds, conveyances, mortgages and titles flowing therefrom, were equally void, involving the Subject Properties.

On February 7, 1967, MARILYN FERNANDEZ filed a Quiet Title Action, *against* FRANCES OWEN WARRINER, in the Circuit Court of Monroe County, Case No. 1-93; which was a whole NEW BALL GAME, "*a new identity of the thing sued for*", and "*a new cause of action*".[4] JUDGE AQUILINO LOPEZ, JR., filed "Certificate of Disqualification", and JUDGE MARSHALL C. WISEHEART, was assigned the case.

Petitioner filed "ANSWER AND COUNTERCLAIM"; JUDGE WISEHEART, forthwith, dismissed the "COUNTERCLAIM", with leave to amend; but before the time allowed, he heard, over the objections of FRANCES OWEN WARRINER, the real, legal and equitable and record owner of the Subject Properties, and granted to MARILYN (KAY) FERNANDEZ, a so-called, "*Partial Summary Judgment*", based solely on her *false affidavit*, filed that day, May 9, 1967, which was properly, timely opposed by FRANCES OWEN WARRINER, the REAL OWNER OF THE SUBJECT PROPERTIES; and in furtherance of *known fraud*, when the AMENDED COUNTERCLAIM, was timely filed, which demanded

[4]Seaboard Coast Line R. Co. v. Industrial Contracting Co., 260 So.2d 860, Fla. 4th Dist. 1972.

TRIAL BY JURY, properly, he forthwith, *without notice or hearing thereon*, dismissed it, saying he had already decided the case, and had given the Subject Properties to MARILYN FERNANDEZ.[5] The said Court's expressed view was: "*that they had gotten by with it*" and "*that there are a lot of criminals running around loose.*"

Before the Court was positive proof that petitioner had obtained her "*root of title*" by legal means, and MARILYN FERNANDEZ, by premeditated fraud, deceit, manipulations, machinations and corruption; and this extensive evidence was undisputed and indisputable.

Nonetheless, the Appellate Court "Affirmed"; the Florida Supreme Court denied jurisdiction; and this Supreme Court of the United States denied Certiorari, January 12, 1970, with rehearing denied March 23, 1970.

The Case of Civil Rights

On September 16, 1970, FRANCES OWEN WARRINER, as Plaintiff, filed her "CIVIL ACTION COMPLAINT FOR PRELIMINARY AND PERMANENT INJUNCTION, AND FOR THE DEPRIVATION OF RIGHTS, AND OTHER AND FURTHER RELIEF", in the United States District Court, Southern District of Florida, Case No. 70-1356, *against:*

"MARSHALL C. WISEHEART and AQUILINO LOPEZ, JR., each individually, and each as JUDGES of the Sixteenth Judicial Circuit, in and for Monroe County, Florida; HARRY FINK, IRVING POL-

[5]Adams v. Citizens Bank of Brevard, 248 So.2d 682, Fla. 4th Dist. 1971.

LACK and HAROLD KASSEWITZ, individually; MARILYN FERNANDEZ, individually, a free dealer, formerly known as MARILYN KAY THAL, a free dealer. and as MARILYN KAY, the wife of PAUL GOODLEMAN, SAM BERGER and BEN GOULD, and as the legal GUARDIAN of SAM KAY, her father; SAM KAY, individually; MARILYN FERNANDEZ and SAM KAY, each as the last officers and directors of the dissolved Florida corporations, LOAN STAR, INC., and PUBLIC INVESTMENT CORPORATION, INC.; T. J. INVESTMENT CO., licensed and organized to do business in the State of Florida, ANTHONEY ROMANO and JOSEPHINE ROMANO, each individually and as officers, agents, employees and servants of said corporation; OCEANADA CORP., licensed and organized to do business in the State of Florida, WILLIAM G. KRANICH and JAMES L. DORMAN, each individually and as officers, agents, employees and servants of said corporation; MONROE LAND TITLE CO., licensed and organized to do business in the State of Florida, C. G. (BEBE) REBOZO and THOMAS H. WAKEFIELD, each individually and as officers, agents, employees and servants of said corporation,

Defendants.

Complaint consisting of three Counts, was detailed, distinct and definite; and of appropriate significance for the purpose intended, namely with specificity to enforce her important Constitutional and Civil Rights; for the unrestricted use, enjoyment and benefit of her very valuable properties; and for redress and damages, both compensatory and punitive; and other and further relief, prop-

erly prayed, and clearly and carefully invoked the Court's jurisdiction, pursuant to the provisions of Title 28, United States Code §1331, §1343, and Title 42, United States Code §1983 and §1985, in pertinent parts; and in most explicit terms attacked the prior State and Federal Court's actions as violative with particularity, Article VI, and Amendments V, VII and XIV of the United States Constitution; and stated that the amount in controversy exceeded Ten Thousand and No/100 Dollars, exclusive of interest and costs; and demanded TRIAL BY JURY. LIS PENDENS was also filed, and all parties defendants, were properly served, including where required, the Attorney General for the State of Florida; the Secretary of State; and the Dade County Attorney.

Defendants' prestigious and otherwise talented Attorneys filed motions to dismiss of varying degrees of intensity, which alleged *"res judicata"* and *"lack of jurisdiction"* and citing as proof thereof, the Initial Decision of the United States Court of Appeals, Fifth Circuit, *Frances O. Warriner v. Harry Fink, et al.*, 307 F.2d 933, (1962) (App. 14-22).

This gravely important case was brought in accordance with *Banco Continental v. Curtiss National Bank of Miami Springs, et al.*, 407 F.2d 510 (1969); *Bell v. Hood*, 327 U.S. 678; and under the Civil Rights Act, as in *Hoffman v. Halden*, 263 F.2d 280, 294 (1959); *Klor v. Hannon*, 278 F.Supp. 359; and *Selio v. Johnson*, 201 F.Supp. 475 (1962).

JUDGE CHARLES B. FULTON heard defendants' motions to dismiss, but did not rule. On November 2, 1970, petitioner, desiring to take depositions and obtain tran-

scripts, sought to do so In Forma Pauperis, which was otherwise beyond her financial capability. Petitioner had paid all prior fees and expenses.

On April 6, 1971, petitioner was run down by a car where she was walking on the sidewalk, very seriously injured, and taken unconscious to the hospital.

Seven months after said motion had been filed, the Court, on June 21, 1971, in the face of *Boddie v. Connecticut*, 401 U.S. 371, 1971, and ignoring the fact that petitioner had paid the filing fee and other prior expense, denied motion to proceed in forma pauperis; and in total disregard of petitioner's rights, dismissed the action. See also *Griffin v. Illinois*, 351 U.S. 12, 100 L.Ed. 891, 76 S.Ct. 585, 55 ALR 2d 1055.[6] Of course petitioner is not the criminal, she is the victim. The Fifth Circuit Court of Appeals dismissed Appeal, and this Court denied Certiorari. (App. 35-40).

The Instant Action

Complaint filed February 9, 1973 was dismissed, and AMENDED COMPLAINT WITH LEAVE OF THE COURT was filed together with LIS PENDENS, timely June 28, 1973, and is specific as was directed by JUDGE M. IGNATIUS LESTER. This multiple cause of action was brought to enforce petitioner's Constitutional and Civil Rights; for relief from the VOID judgments under attack, and pursuant to Florida Rules of Civil Procedure, rule 1.540(b), by

> ". . . an independent action to relieve a party from a judgment . . . or to set aside a judgment . . . for fraud upon the court."

[6]Title 28 United States Code. §1915 (1-3, 4) Adkins v. E. I. duPont de Nemours & Co. 335 U.S. 331.

where as in this case, the misrepresentations in the original action mislead the Court, as to its jurisdiction over the person of the defendant and the subject matter, and the misrepresentations also prevented the defendant, as herein, from presenting a defense in the original action, and it is no longer equitable that the judgment should have prospective application.[7]

When JUDGE LESTER examined the Amended Complaint, and the prior records, which showed clearly and unequivocally, that it was TRUE, not only by virtue of motions to dismiss, which presumed it true, he recused himself, and JUDGE BILL G. CHAPPELL took over.

MORRIS FOX and JEAN FOX moved to dismiss, alleging "*res judicata*", and TITLE GUARANTEE COMPANY filed its absurdity, to-wit:

> "That in paragraph 4, of Plaintiff's Amended Complaint she admits that she has never been deprived of subject property by due process of law. ERGO, Plaintiff's Amended Complaint should be forthwith dismissed with prejudice."

DEFAULT was entered against MARIO R. FERNANDEZ.

Petitioner presented *proof positive* of the fraud upon the Courts, and/or the active cooperation or corruption of the Courts to that end, including the *depositions* of HAROLD KASSEWITZ and his employee, HAROLD TANNEN, two of the initial perpetrators of the fraud; and of

[7]Alexander v. First National Bank of Titusville, 275 So.2d 272 (1973).

MARGARET LOY, who had been the Secretary and Bookkeeper of SAM KAY and his daughter, MARILYN (KAY) FERNANDEZ; and in addition, suggested Judicial Notice, that this controversy arose, NOT from a naughty happening, or mere error or irregularity, BUT FROM, *sinister, intentional, criminal acts of extraordinary dimensions, planned, calculated and executed with the expertise of organized crime; and that these crimes include, with precision:*

CONSPIRACY TO DEFRAUD;

FRAUD, INTRINSIC AND EXTRINSIC;

MALFEASANCE; OBSTRUCTION OF JUSTICE;

MISPRISION OF FELONY; PERJURY;

CONFLICT OF INTEREST; AND THE

DELIBERATE, DEPRIVATION OF RIGHTS GUARANTEED UNDER THE UNITED STATES CONSTITUTION OF AMERICA;

AND THE CIVIL RIGHTS ACT.

Citations, at length, of the carefully articulated opinions of this Supreme Court, and the Fifth Circuit Court of Appeals, granting relief from State Court Judgments or decrees, involving the deprivation of real property by fraud, or without due process, or without jurisdiction, were also presented.

"Defendants represented by Weinsoff and Weinsoff" filed Motion to Hold Plaintiff, Frances C. Warriner, in Contempt, referring to JUDGE WISEHEART'S ORDER, (App. 27-31) "*in that she caused to be filed in the Clerk's records of Monroe County Lis Pendens and deeds clouding title of Defendants*" and requested that she "*be incarcer-*

ated and fined to the fullest extent of the law", and that the action be dismissed. No deed or order was attached, nor otherwise identified.

Since the defenses were insufficient, petitioner filed Motion for Partial Summary Judgment, together with Affidavits, and pertinent evidence attached, and set same for hearing by Special Appointment.

At the ensuing hearing, ONLY defendants' motion to hold plaintiff in contempt was heard. It was a melee of shouts, accusations and abuse, without any semblance of judicial decorum; with the Court saying he thought that instead of holding her in contempt he was going to dismiss the suit, and this he did by ORDER of November 21, 1973, with Rehearing denied January 3, 1974.

The Court ignored the Amended Complaint, the undisputed facts, the Constitutional Questions raised, the affidavits and the extensive applicable memorandums of law.

Appeal was timely filed, and came on for oral argument, at which time Attorney WEINSOFF, waived before the Court a blue backed document, and stated, as in his Brief, that petitioner in disregard of JUDGE WISEHEART'S ORDER, "*filed new deed on December 19, 1972, from herself as Assignee of a corporation to herself, personally, thereby clouding title and violating the injunction.*"

Petitioner was prepared, she had executed two DEEDS on December 19, 1972, a "WARRANTY DEED" and a "QUIT CLAIM DEED", both on DADE COUNTY property; and had also recorded in the Official Records both DEEDS, and an "ASSIGNMENT", all to her from

HOLIDAY, INC., her then dissolved Florida corporation, all of which involved DADE COUNTY property. The Subject Properties are in MONROE COUNTY!!! And, at the direction of the Appellate Court, left TRUE COPIES of the Instruments with the Clerk.

This was typical of the extraordinary contrived lies, fraud and deceit, which petitioner has been forced to endure for more than twenty-five long, painful years.

With repetitious certainty, the Third District Court of Appeal, Affirmed February 25, 1975 and adopted MARILYN FERNANDEZ'S "memorandum" litney of cases in which petitioner had sought relief as a footnote, and, with rehearing denied April 22, 1975. The Florida Supreme Court denied jurisdiction October 30, 1975; with petition for rehearing, clarification of opinion, and suggestion for rehearing *en banc*, all denied January 28, 1976.

FEDERAL QUESTIONS TIMELY RAISED

From the discovery of the fraudulent Final Decree of Foreclosure, to the present, Constitutional Questions have been raised in each proceeding, and that is what this action is all about. The issues of Federal Importance were raised in the Amended Complaint, petitioner's affidavit, pleadings, memorandums of law, assignments of error; and in the Appellate Court, her Brief, and Reply Briefs, Appendixes; and in the Florida Supreme Court, in Brief on Jurisdiction, citing *Mayflower Inv. v. Brill*, 188 So. 205, Supreme Court Division B, 1939, accenting the guarantees under Amendments V and XIV, of the U.S. Constitution, to-wit:

> "It is fundamental that due process guarantees to a party notice and an opportunity to be heard *before* his rights are taken away from him by order, decree or judgement of any court. See Windsor v. McVeigh, 93 U.S. 274, 23 L.Ed. 914; Hovey v. Elliott, 167 U.S. 409, 17 S.Ct. 842."

And, as a further reminder, in her Petition for Rehearing, and for clarification of opinion, that:

> "It is presumed by Petitioner, that since all "*judicial Officers, both of the United States and of the several States,*" are bound "*by Oath or Affirmation to support this Constitution:*" that is the Constitution of the United States of America, that the five judge panel, of JUDGES ADKINS, C. J. ROBERTS, OVERTON, ENGLAND AND SAUNDERS, JJ are cognizant of the contents, and individual guarantees, immunities and limitations, of our revered Constitution; and that *no person can be deprived of property without due process of law; that all persons are guaranteed equal protection under the laws of the Land*; that *trial by jury shall be preserved;* that "*this Constitution, and the Laws of the United States * * * shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary, notwithstanding.*"

REASONS FOR GRANTING THE WRIT

The decision of the Florida Supreme Court to deny jurisdiction, repudiates the most basic, fundamental and enduring, important portions of the United States Constitution, and abridge the privileges and immunities guaranteed thereunder; and is such a departure of the principles established, and of such consequence as to warrant review and supervision of this Honorable Court.

I

This Court has recently granted Certiorari on substantially the same question in a State proceeding.

In a forceful articulated opinion, this Court speaking through Mr. Justice Stewart ruled, that an opportunity to be heard '*must be granted at a meaningful time and in a meaningful manner*' in *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972); and that:

> "For more than a century the central meaning of procedural due process has been clear: "Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified" Baldwin v. Hale, 1 Wall, 223, 233, 17 L.Ed. 531. See Windsor v. McVeigh, 93 U.S. 274, 23 L.Ed. 914; Hovey v. Elliott, 167 U.S. 409, 17 S.Ct. 841, 42 L.Ed. 215; Grannis v. Ordean, 234 U.S. 385, 34 S.Ct. 779, 58 L.Ed. 1363. It is equally fundamental that the right to notice and an opportunity to be heard "must be granted at a meaningful time and in a meaningful manner."

"The issue is whether procedural due process in the context of these cases requires an opportunity for a hearing *before* the State authorizes its agents to seize property in the possession of a person upon the application of another."

"It has long been recognized that "fairness can rarely be obtained by secret, one-sided determination of facts decisive of rights . . . (And n)o better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and an opportunity to meet it."

"If the right to notice and hearing is to serve its full purpose, then, it is clear that it must be granted at a time when the deprivation can still be prevented. At a later hearing, an individual's possessions can be returned to him if they were unfairly or mistakenly taken in the first place. Damages may even be awarded to him for the wrongful deprivation. But no later hearing and no damage award can undo the fact that arbitrary taking that was subject to the right of procedural due process has already occurred. This Court has not . . . embraced the general proposition that a wrong may be done if it can be undone."

"This is no new principle of constitutional law. The right to a prior hearing has long been recognized by this Court under the Fourteenth and Fifth Amendments."

II

The Decision below has so far departed from the accepted course of judicial proceedings and the prior Decisions of this Court as to warrant review.

Strong ground has been taken by this Supreme Court and in strong language, against treating cases as in default which were not so; and this was the view in *Hovey v. Elliott*, 167 U.S. 409, 17 S.Ct. 841, 42 L.Ed. 215, where it said:

> "The fundamental conception of a court of justice is condemnation only after hearing. To say that courts have an inherent power to deny all right to defend an action and to render decrees without any hearing whatever is in the very nature of things to convert the court exercising such authority into an instrument of wrong and oppression, and hence to strip it of the attribute of justice upon which the exercise of judicial power necessarily depends."

Throughout this controversy, petitioner has attacked the decree and judgements on the ground that procedural due process had not been observed in their rendition; and that they were each obtained by fraud upon the Courts; and/or the active cooperation and/or corruption of the Courts to that end; and the then defendants, have relied upon the said VOID judgements as their defense, and have prevailed, by the false allegation of "*res judicata*" or "*collateral estoppel*" by their attorneys.

This is in direct conflict with this Court's holding in time honored case of *Griffin v. Griffin*, 1946, 327 U.S. 220, 66 S.Ct. 556, 90 L.Ed. 635, that.[8]

> "A judgement obtained in violation of procedural due process is not entitled to full faith and credit when sued upon in another jurisdiction. . . . Moreover, due process requires that no other jurisdiction shall give effect, even as a matter of *comity*, to a judgement elsewhere acquired without due process."

It is well to remember that FRANCES OWEN WARRINER did NOT know, until, on or about December 15, 1966, that HARRY FINK had had NO STANDING before the Court, HE WAS NOT THE OWNER OF THE NOTE SUED UPON, the Monroe County Circuit Court had had NO JURISDICTION, and the said judgement was THRICE VOID.

It WAS obtained by fraud upon the Court.

It WAS rendered without due process of law.

It WAS rendered by Court WITHOUT JURISDICTION.

Without question is the FACT that such a judgement IS A VOID JUDGEMENT, cannot be *confirmed, affirmed* or *ratified*, but remains no better than its beginning, which is a nullity, a nothing, and like the multiplication of nothing, REMAINS NOTHING; NULL; INEFFECTUAL; NUGATORY; HAVING NO LEGAL OR BINDING EF-

[8]See also O'Boyle v. Bevil, 259 F.2d 506; and Seven-Up Bottling Co. v. George Const., 108 So. 260.

FECT; UNABLE TO SUPPORT THE PURPOSE FOR WHICH IT WAS INTENDED, and as stated in Black's Law Dictionary:

> "VOID JUDGEMENT. One which has no legal force or effect, invalidity of which may be asserted by any person whose rights are affected at any time and at any place directly or collaterally. Reynolds v. Volunteer State Life Ins. Co., Tex. Civ. App. 80 S.W.2d 1087, 1002. One which from its inception is and forever continues to be absolutely null, without legal efficacy, ineffectual to bind parties or support a right, of no legal force and effect whatever, and incapable of confirmation, ratification, or enforcement in any manner or to any degree. Ex parte Meyers, 121 Neb. 56, 236 N.W. 143, 144. One that has merely semblance without some essential elements, as want of jurisdiction or failure to serve process or have party in court. Wellons v. Lassiter, 200 N.C. 474, 157 S.E. 434, 436. It is subject to collateral attack. Owens v. Cocroft, 14 Ga. App. 322, 80 S.E. 906, 907."

III

The result achieved by the Decision below should not be sanctioned by this Court.

The decision of the court below defies our heritage by our founding fathers of great and noble men dedicated to the protection of individual rights, and if allowed to

stand, would create havoc and have a devastating effect on our honored system of government; and could lead to further crime and corruption.

It is well to note the irreparable damage and destruction not only to petitioner's business as a real estate broker, but to her health; and also the ridicule and abuse she has suffered; and for the deprivation of the use, enjoyment, development and income from her very valuable properties, over a very long time.

The damage to the Subject Properties, by trespass, the removal of top soil, rock fill, of rare, tropical, irreplaceable trees; and colorful exotic tropical fish, from the lake, taken in abundance; and most important the devious encroachment on the land itself, which will require considered attention.

Additionally significant, however, is that the decision which results in these consequences—to say nothing of the financial consequences to petitioner—will stand as an aberration in the law.

Finally, if the decision below is permitted to stand it will symbolize the sanctioning of judicial interference with the carefully conceived provisions of the Constitution of these United States.

CONCLUSION

It is important to observe that when the Initial Decision by the U.S. Fifth Circuit Court of Appeals, was rendered, that petitioner did NOT know that HARRY FINK had NOT been the owner of the "NOTE" sued upon, because she had NEVER HAD HER DAY IN COURT; and further, at that point in time, the then NEW Federal Judicial Code, Title 28, Section 2283 (2-3), of the United States Code Annotated, then provided:

> "Excepting clause of present section 'restores' the basic law as generally understood and interpreted prior to the Toucey decision."

and *Simon v. Southern Railway Company*, 236 U.S. 115, (1915) and *Johnson v. First National Bank*, 10 Cir. 223 F.2d 31 (1955) was then good, effective law; as well as *Wells Fargo & Co. v. Taylor*, 254 U.S. 175, 41 S.Ct. 93, 65 L.Ed. 205. All of which was brought to the attention of this Supreme Court by petitioner, in her Petition for Writ of Certiorari, Case No. 817.

Under the circumstances of this case as set out above, petitioner believes the Court may conclude that the court below committed clear error, and that the appropriate relief is a summary reversal and remand for such further proceedings as may be appropriate. Cf. e.g. *Mason v. City*

of Biloxi, 385 U.S. 370; *Johnson v. Virginia*, 373 U.S. 61 (1963). Or, the Court may conclude that the cause should be set for briefs and argument.

The Supremacy of the United States Constitution and the Guarantees of Individual Rights should prevail over the persuasion of "Comity".

Respectfully submitted,

FRANCES OWEN WARRINER
2735 S.W. 10th Terrace, Apt. #3
Miami, Florida 33135
In Proper Person for Petitioner

April 1976

APPENDIX

SUPREME COURT OF FLORIDA
JULY TERM 1975

No. 47,330
District Court of Appeal, Third District, No. 74-137

FRANCES OWEN WARRINER, a/k/a
FRANCES O. WARRINER, Petitioner,
v.

MARILYN FERNANDEZ, ETC. ET AL., Respondents.

Opinion filed Thursday, October 30, 1975

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari, jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5 c(6), and it appearing to the Court that it is without jurisdiction, it is ordered that the Petition for Writ of Certiorari be and the same is hereby denied.

ADKINS, C. J., ROBERTS, OVERTON, ENGLAND AND SUNDBERG, JJ CONCUR

A True Copy

TEST

Sid J. White
Clerk Supreme Court

Frances Owen Warriner, in proper person for Petitioner.

Bolles, Goodwin, Ryscamp & Welcher; and Weinsoff & Weinsoff, for Respondents.

IN THE SUPREME COURT OF FLORIDA
JANUARY TERM, 1976
WEDNESDAY, JANUARY 28, 1976

** CASE NO. 47,330
** DCA 3 No. 74-137
** Circuit Court in and for
Monroe County, No. 73-116

FRANCES OWEN WARRINER, a/k/a
FRANCES O. WARRINER, Petitioner,
v.

MARILYN FERNANDEZ, ETC., ET AL., Respondents.

On consideration of the Petition for Rehearing, etc., filed by petitioner,

IT IS ORDERED that said petition is denied.

ADKINS., C. J., ROBERTS, OVERTON, ENGLAND AND SUNDBERG, JJ., CONCUR

A True Copy

TEST:

/s/ Sid J. White

Sid J. White
Clerk Supreme Court.

Frances Owen Warriner, in proper person for Petitioner.

Bolles, Goodwin, Ryscamp & Welcher; and Weinsoff & Weinsoff, for Respondents.

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT
JANUARY TERM, A.D. 1975

No. 74-137

FRANCES OWEN WARRINER, a/k/a
FRANCES O. WARRINER, Appellant.
v.

MARILYN FERNANDEZ, an alleged free dealer, formerly known as Marilyn Kay Thal, etc., et al.,
Appellees.

Opinion filed February 25, 1975

An Appeal from the Circuit Court for Monroe County, Bill G. Chappell, Judge.

Frances Owen Warriner, in proper person.

Weinsoff & Weinsoff; Bolles, Goodwin, Ryscamp & Welcher; Paul Revere Berglund, for appellee.

Before PEARSON, HAVERFIELD and NATHAN, JJ.

PER CURIAM.

This is an appeal by the Plaintiff, Frances Owen Warriner, from two orders of the circuit court of Monroe County, the first granting the defendants' motion to dismiss with prejudice, ordering that the defendants recover from the plaintiff their costs and directing the clerk of the circuit court of Monroe County to remove, delete and

expunge from the public records of such county "those instruments filed for record by the plaintiff herein, if any, which interfere with the possession, title, use or disposal of the real property subject herein" The second is an order denying the plaintiff's petition for rehearing.

We are cognizant of the numerous previous lawsuits concerning the identical parcel of property herein involved; that the appellant, Frances Owen Warriner, was a party to each and every one of those previous lawsuits and that the matter has reached final disposition on those multiple occasions.[1]

---

[1]. . . "Fink v. Warriner, Case No. 12516 filed in Monroe County, Florida on October 26, 1950, in her efforts to overturn or modify the adverse decision entered against her in the last mentioned case, as follows:

. . . Frances O. Warriner vs. Harry Fink, Circuit Court of Monroe County, Florida, Case No. 12-1172, Case entitled 'Original Bill in the Nature of a Bill of Review'. This action was dismissed by the Supreme Court of Florida in 1953, 62 So.2d. 913.

. . . Frances O. Warriner vs. Harry Fink, Circuit Court of Monroe County, Florida, Case No. 14-1187, Case entitled 'Original Bill in the Nature of a Bill of Review'. This Complaint was dismissed March 5, 1958. An Appeal was taken to the Third District Court of Appeal and the appeal was quashed on October 21, 1958. Rehearing was denied April 20, 1959. The Order of the Third District Court of Appeal was taken to the Supreme Court of Florida as Case No. 23395 and was dismissed by the Supreme Court of Florida on October 7, 1959.

. . . Frances O. Warriner v. Harry Fink, et al., District Court for the Southern District of Florida, Case No. 10-395, seeking to upset the decree entered in Case No. 12516, which is the initial case referred to in paragraph 1 hereof. This action was dismissed by the United States District Court on February 28, 1961. An appeal was taken to the United States Court of Appeals and the Order of dismissal was affirmed and is reported in 307 F.2d 933. Certiorari denied by the Supreme Court of the United States, 372 U.S. 943.

We are of the opinion, therefore, that the appellant is prevented from pursuing the instant litigation because of estoppel by judgment. Affirmed on the authority of McGregor v. Provident Trust Co., of Philadelphia 1935, 119 Fla. 718, 162 So. 323; School Board of Flagler County v. Hauser, Fla. 1974, 293 So. 2d. 681.

Affirmed.

. . . Frances O. Warriner vs. Harry Fink, United States District Court for the Southern District of Florida, Case No. 63-611. This action was dismissed by the United States District Court in March 1964.

. . . Marilyn Fernandez v. Frances O. Warriner, Circuit Court of Monroe County, Florida. This was an action filed against the Plaintiff, Frances O. Warriner, and was a bill to remove a cloud on title and for an injunction. Frances O. Warriner filed a counterclaim predicated upon basically the same charges as above outlines. A final Order quieting the title of Marilyn Fernandez and dismissing Warriner's counterclaim was entered May 19, 1967. This Order was appealed in the Third District Court of Appeal and affirmed on May 21, 1968, 213 So.2d 328, Petition for Rehearing denied August 22, 1968, Petition for certiorari was denied by the Supreme Court of Florida, in March 1969, rehearing denied May 2, 1969, 225 So.2d 524. A Petition for certiorari was filed in the Supreme Court of the United States on October 17, 1969, and this Petition for certiorari was denied by the Supreme Court of the United States on January 17, 1970. Rehearing was denied on March 23, 1970 . . .

This very Order . . . is predicate for the dismissal of the Plaintiff's Amended Complaint. "Memorandum of cases filed by counsel for the appellee.

(This case was reported, Florida Appeal, 1975, in 310 So.2d 375.)

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT
JANUARY TERM, A.D. 1975
TUESDAY, APRIL 22, 1975

NO. 74-137

FRANCES OWEN WARRINER, a/k/a
FRANCES O. WARRINER, Appellant,
v.

MARILYN FERNANDEZ, an alleged free dealer,
formerly known as MARILYN KAY THAL,
etc., et al., Appellees.

Appellant in proper person, having filed in this cause a petition for rehearing, and the same having been considered by the court which determined the cause, it is ordered that said petition be and it is hereby denied.

A True Copy

ATTEST:

/s/ WILLIAM P. CARTER
Clerk District Court of
Appeal, Third District

cc: Frances O. Warriner
Weinsoff & Weinsoff
Bolles, Goodwin, Ryscamp &
Welcher
Paul R. Berglund

IN THE CIRCUIT COURT OF THE SIXTEENTH
JUDICIAL CIRCUIT OF THE STATE OF FLORIDA
IN AND FOR MONROE COUNTY
GENERAL JURISDICTION DIVISION

No. 73-116

FRANCES OWEN WARRINER, a/k/a
FRANCES O. WARRINER, Plaintiff,
v.

MARILYN FERNANDEZ, an alleged free dealer,
formerly known as MARILYN KAY THAL,
a free dealer, etc., et al, Defendants.

Order, filed November 21, 1973

Key West, Florida

Before Honorable Bill G. Chappell, Judge, of the above entitled court, at the Monroe County Courthouse, Key West, Florida.

Frances Owen Warriner, in proper person, for Plaintiff.

Irving Weinsoff; and Paul R. Berglund, for Defendants.

ORDER

Motions of Defendants, MORRIS FOX and JEAN FOX and TITLE GUARANTY COMPANY OF BALTIMORE, MARYLAND, to dismiss and an application by the

Defendants, MARILYN FERNANDEZ and MARIO FERNANDEZ, that the plaintiff, FRANCES O. WARRINER, be held in Contempt, and praying for an Order dismissing the above-entitled action, having duly come on to be heard before me and after hearing argument thereon, and upon examining and considering the files and records of this cause along with those of prior causes at the request of the Plaintiff, the Court finds that a permanent injunction was entered by the Honorable Marshall C. Wiseheart, Judge of this Court on May 9, 1967 in case 1-93, enjoining and restraining the Plaintiff herein from filing and/or recording any deed, claim, interest, right or demand against the subject property herein or from in any way interfering with Defendant, MARILYN FERNANDEZ in her possession, title, use or disposal of subject property; that said injunction and other issues were left undisturbed on appeal; that said injunction is still in full force and effect; that Plaintiff has failed to comply with this injuncton and is in violation of same by filing this action, that in said case number 1-93 the Defendant, MARILYN FERNANDEZ, was declared to be the legal and record title owner of subject property herein; that the Plaintiff herein has alleged in actions prior hereto both her claims of Fraud upon the Court and denial of due process of law, although she has advised this Court that she was unaware of facts supporting such allegations prior to this action; that judgments and/or decrees sought to be vacated and set aside herein have been affirmed by appellate courts and absent leave of said Courts, this Court is without jurisdiction; that the Court has been very lenient and considerate with Plaintiff, making great allowances for the fact that she represents herself without benefit of counsel, but the general allegations and insinuations contained in the papers filed herein and in oral statements certainly border upon

criminal contempt and the Court hereby advises Plaintiff accordingly; that the Plaintiff has failed to show the existence of adequate grounds to justify the exercise of that discretionary power granted the Court under RCP 1.540 (b) to entertain an independent action for relief based upon fraud on the Court; and

Therefore, upon the aforesaid Motions by Defendants, or upon Motion by the Court, sua sponte, and the Court being otherwise informed in the premises, it is,

ORDERED AND ADJUDGED:

1. That the above-entitled action be, and the same is hereby dismissed with prejudice, and that Defendants recover of Plaintiff their costs; this Court hereby retaining jurisdiction of this cause for the sole purpose of determining the amount of said costs to be taxed herein, and to order and direct the Clerk of the Circuit Court of Monroe County of the State of Florida to remove, delete and expunge from the Public Records of Monroe County those instruments filed for record by the Plaintiff herein, if any, which interfere with the possession, title, use or disposal of the real property subject herein.

DONE AND ORDERED at Key West, Monroe County, Florida, this 21st day of November, 1973.

/s/ Bill G. Chappell

Circuit Judge

IN THE CIRCUIT COURT OF THE SIXTEENTH
JUDICIAL CIRCUIT OF THE STATE OF FLORIDA,
IN AND FOR MONROE COUNTY
GENERAL JURISDICTION DIVISION
JANUARY 3, 1974

No. 73-116

FRANCES OWEN WARRINER, a/k/a
FRANCES O. WARRINER, Plaintiff,
v.

MARILYN FERNANDEZ, an alleged free dealer,
formerly known as MARILYN KAY THAL,
a free dealer, etc., et al., Defendants.

Before Honorable BILL G. CHAPPELL, JUDGE, of the above entitled Court, at the Monroe County Courthouse, Key West, Florida.

Frances Owen Warriner, in proper person, for Plaintiff.

Irving Weinsoff; and Paul R. Berglund, for Defendants.

ORDER

Plaintiff's Motion for Rehearing on Defendants' Motion to Dismiss, filed by the Defendants, Morris Fox, Jean Fox and Title Guaranty Company of Baltimore, Maryland,

for which an Order was entered under date, November 21, 1973, came on to be heard this date and upon hearing argument of Plaintiff and the Court being otherwise fully advised in the premises, it is

ORDERED and ADJUDGED that the Order dated and filed November 21, 1973, in which the above entitled action was dismissed with prejudice shall remain in full force and effect as stated therein.

That the Relief applied for in Plaintiff's Motion for Rehearing is hereby denied.

DONE and ORDERED at Key West, Monroe County, Florida, this 3rd day of January, A.D. 1974.

/s/ BILL G. CHAPPELL

Bill G. Chappell, Judge.

RALPH W. WHITE
Clerk of the Circuit Court

Monroe County, Florida **Key West, Florida**

May 2nd, 1975

Type of Instrument	Date Filed and Docketed	Number of Pages of Instrument
Bill To Foreclose Mortgage*** with Mortgage Deed Attached	October 26, 1950	7
Notice of Lis Pendens	October 26, 1950 Recorded in Book 4 Page 93	1
Answer filed by B.R. Cisco, Attorney for Defendant	November 28, 1950	2
Summons in Chancery issued for Frances O. Warriner on October 26, 1950, served on Frances O. Warriner November 8, 1950	December 11, 1950	1
Stipulation with Copy of Final Decree of Foreclosure attached	December 29, 1950	6
Final Decree of Foreclosure signed by Judge Aquilino Lopez, Jr. on December 28th, 1950	December 29, 1950 Recorded in Book A-7 Pages 38, 39, 40, 41, 42.	5

***Mortgage was to HENRY H. HERMAN, 3144 Royal Palm Avenue, Miami Beach, Florida.

I have searched the docket and file in Case Number 12-516, Harry Fink as Plaintiff and Frances O. Warriner as Defendant and hereby certify that the above listed instruments were filed, docketed and recorded as so stated in the Office of Clerk of Circuit Court on the dates shown above. There are no other papers filed and docketed in Case Number 12-516, Harry Fink as Plaintiff and Frances O. Warriner as Defendant between the filing of the Bill To Foreclose Mortgage with Mortgage Deed attached and the Final Decree of Foreclosure signed by Judge Aquilino Lopez, Jr., except the instruments listed above. The number of pages listed are the number of pages in the instruments as indicated.

Ralph W. White,
Clerk of Circuit Court
Monroe County

By: /s/ June Holland
Deputy Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT.

No. 19131

FRANCES O. WARRINER, Appellant,
versus

HARRY FINK, ET AL., Appellees.

Appeal from the United States District Court for the Southern District of Florida.

(September 13, 1962)

Before RIVES, JONES and GEWIN, Circuit Judges.

RIVES, Circuit Judge: This appeal is from a judgment dismissing a complaint for lack of jurisdiction and for failure to state a claim upon which relief can be granted. The voluminous record consists mostly of legal conclusions, briefs and arguments. The complaint alone, with its exhibits, comprises ninety pages of the printed record. When the facts are ultimately distilled, however, they are comparatively simple. They can be best understood by stating them in chronological order.

On August 17, 1948, the plaintiff executed a mortgage on certain very valuable lands located in Monroe County, Florida, in the amount of $10,000.00. The mortgage was actually to Sam Kay, but was taken in the name of his brother-in-law, Morris Resnick. Kay knowingly exacted interest in excess of 25% in violation of Florida Statutes

687.07. The complaint alleges that a proper application of payments and credits would completely extinguish and discharge the debt.

On January 31, 1950, the plaintiff executed a rewritten mortgage for $10,500.00 founded upon the same debt. Kay agreed to give her $3,000.00 previously withheld and an additional $500.00, but later refused to do so. While the mortgage was rewritten by Sam Kay and he was the real party in interest, it was taken in the name of Henry H. Herman. The rewritten mortgage was without any consideration moving to plaintiff. Sam Kay was at all times the real party in interest, and Henry H. Herman, Marilyn Kay, Harry Fink and others conspired with Sam Kay to perpetrate a fraud on the plaintiff. On February 21, 1950, Herman transferred the mortgage to Marilyn Kay. On July 26, 1950, Marilyn Kay transferred it to Harry Fink. On October 26, 1960, Harry Fink filed his bill to foreclose the mortgage in the Circuit Court of Monroe County, Florida.

The plaintiff, Frances O. Warriner, employed an attorney to defend the foreclosure suit, and filed an answer admitting the residence and age of the parties but denying all other allegations. The complaint alleges:

> "That on December 22, 1950, just three days before Christmas, Cisco [Mrs. Warriner's attorney], was tricked into a stipulation with Harold Kassewitz, attorney for Harry Fink, who concocted an unauthorized stipulation, intended and calculated to deprive the plaintiff herein, of her constitutional rights, of due process of law; and which, in effect, waived all of her substantial rights, erroneously, unlawfully and

irregularly, without her knowledge, consent or approval, and was unauthorized as these attorneys then knew; and that the plaintiff herein was thus defrauded out of an opportunity to present her meritorious defense in the original action thereby, to her great damage and injury."

Attached to the complaint are affidavits of both of plaintiff's former attorneys. Attorney Cisco's affidavit reads as follows:

"In that certain cause pending in the Circuit Court of the Eleventh Judicial Circuit in and for Monroe County, Florida, in Chancery, No. 12-516, entitled 'Harry Fink, Plaintiff vs. Frances O. Warriner, Defendant,' upon request of the defendant I prepared an answer to the Bill of Complaint filed in the above entitled cause and traversed said bill placing plaintiff upon due proof to establish the allegations of said Bill of Complaint; had I known at said time that a special defense, to-wit, usury, was involved, I would have set same up in said answer.

"Thereafter, I entered into a stipulation with Harold Kassewitz, attorney for plaintiff, and at his request, wherein and whereby final decree could be entered by the Court having jurisdiction of the subject matter of the suit and that the sale of the property was to be postponed beyond the time of the due process provided under the statutes and rules of the Court.

"The sole purpose and consideration (as cited in said stipulation) for the execution of said stipulation

was to give the defendant an extension of time prior to the sale date within which to either pay the indebtedness, bid at sale or refinance her property. The record shows that no additional time beyond the statutory period was, in fact, extended to said defendant, which was not the purpose of such stipulation or the agreement between counsel.

"In addition the stipulation did not waive the necessity on the part of the plaintiff to introduce evidence to establish the debt sued upon, that is to say, the introduction into evidence and proof of the note or notes and mortgage securing same.

"I have no independent recollection, nor have I any notes or records as to whether or not the stipulation was discussed by me with Mrs. Warriner, but in any event, it would have never been executed by me except with the express understanding that a reasonable period of time was to be given to the defendant beyond the time which was allowed under the statute."

Relying upon the fraudulent stipulation, the court on December 28, 1950 entered a final decree finding Mrs. Warriner's indebtedness under the mortgage to be $11,458.40 — plus $31.85 cost of abtsartc, plus $750.00 attorney's fee, and ordering the property sold by a special master to the highest and best bidder on February 5, 1951. At that sale Harry Fink became the purchaser "for the egregiously low sum of $1,000.00." The plaintiff had been kept in ignorance of the fraudulent stipulation, the final decree and the sale.

As soon as the plaintiff learned of those events, she employed other counsel, repudiated the unauthorized stipulation, and on March 6, 1951 filed her motion to set aside the final decree and the master's sale, and requested that she be allowed to offer her defense to the bill of foreclosure. The court, on September 20, 1951, granted the motion to set aside the sale, but denied the motion to set aside the final decree, and thus deprived plaintiff of her right to defend against the bill of foreclosure. The master conducted another sale on October 15, 1951, and Harry Fink again became the purchaser, but this time "for the egregiously low sum of $5,000.00." The master filed his report of sale on October 22, 1951, and a motion for confirmation was set for hearing on November 9, 1951, but was not heard because plaintiff's then attorney, Leland Hyzer, filed a notice of appeal the preceding day.

The transcript of record was filed in the Supreme Court of Florida on January 10, 1952. Two days later Harry Fink, the appellee, filed a motion to dismiss the appeal in which he undertook to deceive the Court into ruling that the appeal was from the decree of December 28, 1950, when in reality it was from the order of September 20, 1951. Plaintiff's then attorney, Leland Hyzer, wrote a letter to the Clerk of the Supreme Court of Florida explaining that, "the notice of appeal was taken from that portion of the Circuit Court's order denying the motion to set aside the final decree," and that, "it is our position that the record has been properly filed in accordance with Rule No. 12." Nonetheless, the Supreme Court of Florida on January 23, 1952 dismissed the appeal without any consideration of the merits, but sustaining Harry Fink's motion that the transcript of the record on appeal was not filed within time.

The plaintiff has since litigated extensively in Florida in an effort to have her defense to the foreclosure of the mortgage heard on its merits, but always without success. She now brings the present complaint to enjoin the defendants from enforcing the final decree of foreclosure, and to attack that decree as void. No diversity of citizenship is alleged. Instead, in the complaint filed in her own proper person, the plaintiff expresses her theory of the federal court's jurisdiction as follows:

> "This action arises under the Constitution of the United States, the First, Fifth and Fourteenth Amendments, thereof, the "Taking of Property Without Due Process of Law,' and the 'Denial of Equal Protection Under the Laws of the Land,' as hereinafter more fully and particularly appears. This is a civil suit brought for the purpose of declaring null and void and enjoining the enforcement of a certain order of the Circuit Court of the Sixteenth Judicial Circuit, in and for Monroe County, Florida, In Chancery, entitled 'Final Decree of Foreclosure,' entered December 28, 1950, and Recorded in Chancery Order Book A-7 at Pages 34/42, which seeks to deprive the plaintiff of her property without due process of law and denies the plaintiff the equal protection of the laws in violation of her rights under the First, Fifth and Fourteenth Amendments to the Constitution of the United States and that the order is therefore illegal, null and void . . ."

The plaintiff has appeared and argued the case very creditably in her own behalf and has impressed the Court with her sincerity. It is for that reason and to enable her the more easily to petition for review of our judgment in

the Supreme Court of the United States, if she so desires, that we have set forth the facts alleged in the complaint in such detail.

The plaintiff insists that through no fault of her own she is being deprived of valuable properties without any hearing on the merits of her defense to the bill of foreclosure and thus without due process of law. Her argument is that the purported final decree of foreclosure is an absolute nullity because of fraud practiced on the court, and that a federal district court can enjoin a party from enforcement of such a void judgment under such authorities as Simon v. Southern Railway Company, 1915, 236 U.S. 115, and Johnson v. First National Bank, 10 Cir., 1955, 223 F.2d 31.

We are convinced, however, that when the plaintiff failed to seek review by the Supreme Court of the United States of the judgment of the Supreme Court of Florida of January 23, 1952 dismissing her appeal, she lost the only avenue of relief available to her in the federal courts. In the light of the anti-injunction statute, 28 U.S.C.A., §2283, and of a number of decisions of the Supreme Court and of this and other Circuits, in which the principles are fully discussed, we hold that the federal district court had no jurisdiction to enjoin the enforcement of, or to set aside, or hold null and void the decree of foreclosure entered by the Circuit Court of Monroe County, Florida. See Rooker v. Fidelity Trust Co., 1923, 263 U.S. 413; Toucey v. New York Life Ins. Co., 1941, 314 U.S. 118; Chicago Life Ins. Co. v. Cherry, 1917, 244 U.S. 25, 30; Manufacturer's Record Publishing Co. v. Lauer, 5 Cir., 1959, 268 F.2d 187; T. Smith & Son, Inc. v. Williams, 5 Cir., 1960, 275 F.2d 397, 402 et seq.; Hanna v. Home Insurance Company, 5

Cir., 1960, 281 F.2d 298; Sexton v. Barry, 6 Cir., 1956, 233 F.2d 220; numerous cases collected in Annotation 13 A.L.R. 2d, pp. 467, et seq. §23. The judgment is therefore AFFIRMED.

JONES, Circuit Judge, Concurs in the Result.

A true copy

Test: EDWARD W. WADSWORTH
Clerk, U. S. Court of Appeals, Fifth Circuit

By /s/ G. F. Ganucheau
Deputy

New Orleans, Louisiana, October 8, 1962.
(Seal)

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
October Term, 1961

No. 19,131

D. C. Docket No. 10,395-M-Civ.
FRANCES O. WARRINER, Appellant,
versus
HARRY FINK, ET AL., Appellees.

Appeal from the United States District Court for the Southern District of Florida.

Before RIVES, JONES and GEWIN, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Florida, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered and adjudged that the appellant, Frances O. Warriner, be condemned to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

"Jones, Circuit Judge, Concurs in the Result."

September 13, 1962

Issued:

IN THE UNITED STATES DISTRICT COURT IN
AND FOR THE SOUTHERN DISTRICT OF FLORIDA
MARCH 3, 1964

NO. 63-611 Civ-CF

FRANCES O. WARRINER, Plaintiff,
v.

HARRY FINK,ET AL., Defendants.

Before Honorable CHARLES B. FULTON, JUDGE.

Frances O. Warriner, for Plaintiff.

Sibley, Grusmark, Giblin, King & Levinson; Burnett Roth, Irving Firtel & Gilbert A. Frank, for Defendants.

ORDER OF DISMISSAL

This cause has been presented to and considered by the Court upon the Motions of the several defendants to dismiss the complaint.

The complaint alleges that in 1950, plaintiff was divested of title to realty by a judgment of the Circuit Court in and for the Eleventh Judicial Circuit of Florida, and that thereafter this judgment was affirmed by the Supreme Court of Florida.

In her instant complaint, plaintiff alleges that thereafter she filed in this Court a complaint wherein she made a collateral attack upon said judgment of the state court. Plaintiff alleges that said proceedings in this Court was

dismissed upon a motion that challenged the jurisdiction of this Court, which dismissal was affirmed by the Circuit Court of Appeals, after which plaintiff's petition for Writ of Certiorari was denied by the Supreme Court of the United States. See Warriner v. Fink, et al., 307 F.2d 933, (5th Cir. 1962), cert denied, 372 U.S. 943 (1963).

In the instant complaint plaintiff again challenges the validity of said state court judgment, which divested her of the title to said realty.

The allegations of the instant complaint affirmatively and abundantly demonstrate that plaintiff is precluded from maintaining the instant cause because plaintiff's claim has been heretofore fully and finally adjudicated. See Barron & Holtzoff, Federal Practice and Procedure, s 279 at 171 (Rules ed. 1960).

It is therefore,

ORDERED and ADJUDGED that this complaint be and the same is hereby dismissed with prejudice.

DONE and ORDERED at Miami, Florida, this 3 day of March, 1964.

/s/ CHARLES B. FULTON

UNITED STATES DISTRICT JUDGE

(Rehearing denied, May 28, 1964, filed June 1, 1964).

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
FEBRUARY 3, 1965

No. 21978

FRANCES O. WARRINER,

Appellant,

v.

HARRY FINK, ET AL.,

Appellees.

Appeal from the United States District Court
for the Southern District of Florida.

Before TUTTLE, Chief Judge, RIVES, Circuit Judge, and DYER, District Judge.

BY THE COURT:

Appellees have filed a motion to dismiss this appeal on the ground that it was not timely filed and on the further ground that it is without substance and is frivolous.

The order appealed from is a judgment dismissing appellant's complaint with prejudice on the ground of res adjudicata. Within 10 days appellant filed a motion for rehearing of the order of dismissal. Appellant contends this extended the time for the filing of notice of appeal until this motion was acted on by the trial court. Under Rule 73(b) the filing of certain motions has the effect of staying the time for filing notice of appeal. This motion, while it may be said to be somewhat similar to a motion

for a new trial, is not specifically mentioned as one of the motions having the effect of staying the finality of the judgment.

Nevertheless we do not need to pass on the question of timeliness of appeal for we are fully convinced from the history of this litigation in this court that the appeal is wholly frivolous. The appeal is accordingly DISMISSED.

(Rehearing denied, February 17, 1965)

(SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1965, Case No. 426, Misc. Petition for Writ of Certiorari, DENIED.)

IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR MONROE COUNTY.
MAY 9, 1967

No. 1-93

MARILYN FERNANDEZ, a free dealer, formerly known as MARILYN KAY THAL, a free dealer,
Plaintiff,

v.

FRANCES O. WARRINER, a/k/a FRANCES OWEN WARRINER,
Defendant.

Order, filed May 16, 1967, in Key West, Florida Before Honorable Marshall C. Wiseheart, Judge of the above styled court, at Dade County Courthouse, Miami, Florida.

Charles Gertler and William Harper, for Plaintiff.

Frances Owen Warriner, in proper person, for Defendant.

ORDER

Plaintiff's motion for partial summary judgment having duly come on to be heard before me and after hearing argument thereon and being otherwise informed in the premises, it is

ORDERED, ADJUDGED AND DECREED:

1) Plaintiff is hereby declared to be the legal and record title owner of subject property.

2) The Clerk of the Circuit Court of Monroe County of the State of Florida, is hereby ordered and directed to remove, delete and expunge from the Public Records of Monroe County, the following two (2) instruments:

a) Instrument identified as "NOTICE" filed by FRANCES O. WARRINER, a/k/a FRANCES OWEN WARRINER, to whom concerned, which Notice is dated December 22nd, 1966, and filed for record December 23rd, 1966, under Clerk's File No. 144489, recorded in Official Records Book 384, Page 111.

b) Instrument identified as "WARRANTY DEED" from FRANCES O. WARRINER to FRANCES OWEN WARRINER, dated December 22nd, 1966 and filed for record December 23rd, 1966, under Clerk's File No. 144490, and recorded in Official Records Book 384, Pages 112-113.

3) The Defendant, FRANCES O. WARRINER, a/k/a FRANCES OWEN WARRINER, is hereby permanently enjoined and restrained from filing and/or recording any deed, claim, interest, right or demand against the subject property or from in any way interfering with Plaintiff's possession, title, use or disposal of subject property.

DONE and ORDERED in Chambers, at Miami, Dade County, Florida, this 9th day of May, 1967.

/s/ Marshall C. Wiseheart

Judge—Circuit Court

IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA IN AND FOR MONROE COUNTY
AUGUST 2, 1967

No. 1-93

MARILYN FERNANDEZ, a free dealer, formerly known as MARILYN KAY THAL, a free dealer,
Plaintiff,

v.

FRANCES O. WARRINER, a/k/a FRANCES OWEN WARRINER,
Defendant.

ORDER GRANTING MOTIONS TO DISMISS

THIS CAUSE having come on for hearing on the Motions of Marilyn Fernandez, a free dealer, Ralph Resnick, Sam Kay, Murray Goodman, Irving Pollack and Marcella Pollack, Beatrice L. Kohen as Executrix, Public Investment Corporation, Inc., and Harry Fink, to dismiss the Amended Counter Claim of the defendant Frances O. Warriner, and the Court having heard argument of Counsel and being duly and fully advised in the premises,

It is thereupon ORDERED and ADJUDGED that the said motions and each of them be and they are hereby granted; and it is,

Further ORDERED and ADJUDGED that said Counter Claim be and it is hereby dismissed, as to all counter defendants, with prejudice.

DONE and ORDERED at Miami, Florida this 2nd day of August, 1967.

/s/ MARSHALL C. WISEHEART

Circuit Judge

(No hearing was had on this motion.)

IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA IN AND FOR MONROE COUNTY
AUGUST 2, 1967

No. 1-93

MARILYN FERNANDEZ, a free dealer, formerly known as MARILYN KAY THAL, a free dealer,
Plaintiff,

v.

FRANCES O. WARRINER, a/k/a FRANCES OWEN WARRINER,
Defendant.

ORDER

Defendant's motion for rehearing with respect to Plaintiff's motion for partial summary judgment, which this Court heretofore granted, having duly come on to be heard before me and after hearing argument thereon and being otherwise informed in the premises, it is hereby

ORDERED, ADJUDGED and DECREED

That Defendant's motion for re-hearing be and the same is hereby denied.

DONE AND ORDERED in Chambers, at Miami, Dade County, Florida, this 2nd day of August, 1967.

/s/ Marshall C. Wiseheart

Judge—Circuit Court

(There was no hearing on this motion.)

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA THIRD DISTRICT
JANUARY TERM, A.D. 1968
MAY 21, 1968

NO. 67-863

FRANCES O. WARRINER, a/k/a
FRANCES OWEN WARRINER,
Appellant,

v.

MARILYN FERNANDEZ, et al.,
Appelles.

Opinion filed May 21, 1968.

An Appeal from the Circuit Court for Monroe County, Marshall C. Wiseheart, Judge.

Frances O. Warriner, in proper person.

Frank & Alexander; Charles Gertler and William Halper; Murray Goodman; Harold Kassewitz; Gary P. Eidelstein, for Appellees.

Before PEARSON, HENDRY and SWANN, JJ.

PER CURIAM

Affirmed.

(Petition for rehearing and motion for clarification of opinion, were denied August 22, 1968.)

IN THE SUPREME COURT OF FLORIDA
JANUARY TERM, A.D. 1969
FRIDAY, MARCH 7, 1969

NO. 37,918
District Court of Appeal, Third District, No. 67-863

FRANCES O. WARRINER, ETC.,
Petitioner,

v.

MARILYN FERNANDEZ, ETC., ET AL.,
Respondents.

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari, jurisdictional Briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5 c (6), and it appearing to the Court that it is without jurisdiction, it is ordered that the Petition for Writ of Certiorari be and the same is hereby denied.

A true copy

TEST:

/s/ SID J. WHITE
SID J. WHITE
Clerk Supreme Court

cc: Honorable William P. Carter
Honorable Earl R. Adams
Miss Frances O. Warriner
Honorable Gary P. Eidelstein

(Petition for Rehearing and/or Reconsideration of Court's Jurisdiction, was denied May 2, 1969.)

(SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1969, Case No. 1036 Misc. Petition for Writ of Certiorari, DENIED; January 12, 1970, Rehearing denied, March 23, 1970.)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
JUNE 23, 1971

NO. 70-1356-Civ-CF

FRANCES O. WARRINER, etc.,
Plaintiff,

vs.

MARSHALL C. WISEHEART, etc., et al.,
Defendants.

ORDER

This cause came before the Court upon plaintiff Frances O. Warriner's petition to proceed in forma pauperis, without prepayment of costs, fees, or security. Section 1915 of 28 U.S.C. provides in part:

> (a) Any court of the United States may authorize the commencement, prosecution, or defense of any suit, action or proceeding, civil or criminal . . . without prepayment of fees and costs or security therefor, by a person who makes affidavit that he is unable to pay such costs or give security therefore . . . .

Section 1915(d) further provides:

> (d) The court . . . may dismiss the case if the allegation of poverty is untrue, or if satisfied that the action is frivolous or malicious.

The plaintiff has litigated the right to title in the Monroe County land which is the subject matter of this suit in no less than five actions independent of the original 1950 foreclosure suit and appeal therefrom. This is the sixth case instituted by the plaintiff seeking to in some way void a 1950 foreclosure decree entered against her. Litigation over plaintiff's interest in this land has spanned two decades.

Apparently a foreclosure action, out of which all the subsequent actions arose, was filed in Monroe County Circuit Court in October, 1950. Harry Fink v. Frances O. Warriner, Case No. 12516 (Cir. Ct. 1950). A final decree was entered in favor of plaintiff Fink. The entry of this decree was appealed to the Florida Supreme Court by Mrs. Warriner and dismissed by that court on January 21, 1952. Thereafter, plaintiff Warriner brought two actions against Harry Fink in the Monroe County Circuit Court—one in 1952 and one in 1956. Both were dismissed, and the dismissals were upheld on appeal.

Warriner v. Fink, Case No. 12-1172 (Cir. Ct. 1952); Warriner v. Fink, Case No. 14-1187 (Cir. Ct. 1956).

Unsuccessful in state court in her attempts to regain title to the Monroe County land, plaintiff Warriner instituted an action in this Court in 1960 against Harry Fink and others. Plaintiff again sought to upset the 1950 foreclosure decree. Warriner v. Fink, Case No. 10,395-M-Civ-DD (S.D. Fla. 1960). The action was dismissed for failure to state a claim upon which relief could be granted and for lack of jurisdiction and the dismissal was affirmed on appeal. Warriner v. Fink, 307 F.2d 933 (5th Cir. 1962), cert. denied 372 U.S. 943 (1963).

Then, in 1963, plaintiff Warriner instituted another action against Fink in this Court, Warriner v. Fink, Case No. 63-611-Civ-CF (S.D. Fla. 1963), again challenging the validity of the 1950 state court judgment. Finding that the plaintiff's claim had been previously litigated fully and finally and that it was barred under the doctrine of res judicata, the Court dismissed the action. Plaintiff's appeal to the Fifth Circuit Court of Appeals was dismissed, in view of the litigation history of the case, as "wholly frivolous." Warriner v. Fink, Case No. 21978 (5th Cir. 1965).

A quiet title action was filed in 1967 by Marilyn Fernandez against Mrs. Warriner, seeking to remove a cloud on the land's title and to enjoin Mrs. Warriner from interfering with the title to the land by future actions. The Court entered a final order quieting the title of Marilyn Fernandez on May 19, 1967, aff'd. 213 So.2d 328 (Fla. 3rd Dist. 1968), rehearing denied, 225 So.2d 524 (Fla. 3rd Dist. 1969). Certiorari to the United States Supreme Court was denied on January 17, 1970, ____ U.S. ____ (1970).

The present suit ultimately seeks the very same thing plaintiff has sought in her prior actions—the return in some way of title to the real property in Monroe County. Plaintiff prays for the following relief in the present case:

1. That the Court declare the plaintiff the rightful owner of the realty;

2. That the Court set aside or vacate and declare null and void the 1950 final decree of foreclosure and all subsequent related judgments and expunge the same from the public records;

3. That the Court permanently enjoin defendant Fink and others from enforcing their claims to the property and interfering with plaintiff's alleged title.

The prayer reveals that this is the same lawsuit as that originally brought in the Monroe County, Florida, Circuit Court and the same as the prior two federal court actions. As was so well stated by the Fifth Circuit Court of Appeals, "in light of the anti-injunction statute, 28 U.S.C. §2283, and of a number of decisions of the Supreme Court and of this and other Circuits . . . we hold that the federal district court had no jurisdiction to enjoin the enforcement of, or to set aside, or hold null and void the decree of foreclosure entered by the Circuit Court of Monroe County." Warriner v. Fink, 307 F.2d 933, 936 (5th Cir. 1962).

The nature of this action has not changed since the first time it was filed in this Court in 1960; the same relief is sought against many of the same defendants. The recent quiet title action adds nothing and changes nothing. Litigation at some time must come to an end. Endless litigation leads to chaos and frustrates the certainty required of a stable legal system.

Out of an overabundance of caution, the Court awaited the filing of a response by each of the defendants before entering this order.

The Court takes judicial notice of plaintiff's prior actions and after careful consideration, has determined that they constitute a bar to the plaintiff's present action under the doctrines of res judicata and collateral estoppel. This case is frivolous and without merit. In accord with 28 U.S.C. §1915(d) and Brown v. Schneckl 421 F.2d 1402

(9th Cir. 1970); Bryant v. Craven, 415 F.2d 775 (9th Cir. 1969); Fletcher v. Young, 222 F.2d 222 (4th Cir. 1955); Urbano v. Sondern, 41 F.R.D. 355 (D. Conn. 1966), aff'd. 370 F.2d 13; Argentine v. McGinnis, 311 F.Supp. 134 (S.D. N.Y. 1969); United States ex rel Masucci v. Follette, 272 F.Supp. 563 (S.D. N.Y. 1967); Spears v. United States, 266 F.Supp. 22 (S.D. W.Va. 1967); Roberts v. Barbosa, 227 F.Supp. 20 (S.D. Cal. 1964) plaintiff's motion to proceed in forma pauperis is denied and this cause is hereby dismissed.

DONE and ORDERED at Miami, Florida, this 21 day of June, 1971.

CHARLES B. FULTON

Chief Judge

cc: Frances Warriner
U.S. Marshal
County Attorney
Mallory H. Horton, Esq.
Attorney General (P.A. Pacyna)
Max I. Ossinsky
Wakefield, Hewitt & Webster
Taylor, Brion, Buker, Hames, Green & Whitworth
Dixon, Bradford, et al
Pozen, Gold & Gold
Patton, Kanner, Nadeau, Segal & Stoes
Shutts & Bowen

(Motion for Substitution of Parties, Motion to Vacate or Set Aside Court's Order of June 21, 1971, denied, August 5, 1971 and Application for Injuction, DENIED, August 24, 1971.)

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 71-2847

FRANCES O. WARRINER, Etc.,
Plaintiff-Appellant,

versus

MARSHALL C. WISEHEART, etc., ET AL,
Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Florida

[Filed, Nov. 10, 1971]

Before BROWN, Chief Judge, INGRAHAM and RONEY, Circuit Judges.

BY THE COURT:

IT IS ORDERED that appellant's pro se application for leave to appeal in forma pauperis, filed in the above styled and numbered cause, is hereby DENIED.

IT IS FURTHER ORDERED that appellees' motions to dismiss the appeal, are hereby GRANTED.

(SUPREME COURT OF THE UNITED STATES, Case No. 72-5032, Petition for Writ of Certiorari, DENIED, October 10, 1972, on waivers of Respondents, without Briefs. Motion for leave to file Petition for rehearing, DENIED, January 8, 1973.)

MIAMI REVIEW — MIAMI, FLORIDA

MIAMI REVIEW — MIAMI, FLORIDA

Supreme Court, U. S.
FILED
MAY 18 1976
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1542

FRANCES OWEN WARRINER,
a/k/a FRANCES O. WARRINER,

Petitioner,

-vs-

MARILYN FERNANDEZ, an alleged free dealer, formerly known as MARILYN KAY THAL, a free dealer, and as the wife of PAUL GOODLEMAN; SAM BERGER, BEN GOULD, SIDNEY THAL, and MARIO F. FERNANDEZ, individually, and as Administratrix C.T.A. of the Estate of SAM KAY, and as the last officer and director of the dissolved Florida corporations LOAN STAR, INC., and PUBLIC INVESTMENT CORPORATION, INC.; and MARIO R. FERNANDEZ individually and as the husband of MARILYN FERNANDEZ; and MORRIS FOX, and his wife, JEAN FOX; and TITLE GUARANTEE COMPANY OF BALTIMORE, MARYLAND, licensed and organized to do business in the State of Florida.

Respondents.

RESPONDENT'S BRIEF ON JURISDICTION
(MARILYN FERNANDEZ, an alleged free dealer, formerly known as MARILYN KAY THAL, a free dealer, and as the wife of PAUL GOODLEMAN; SAM BERGER, BEN GOULD, SIDNEY THAL, and MARIO R. FERNANDEZ, individually, and as Administratrix C.T.A. of the Estate of SAM KAY, and as the last officer and director of the dissolved Florida corporations LOAN STAR, INC. and PUBLIC INVESTMENT CORPORATION, INC.; and MARIO R. FERNANDEZ individually and as the husband of MARILYN FERNANDEZ).

WEINSOFF, WEINSOFF & CARNEY, P.A.
Attorneys for Respondent,
MARILYN FERNANDEZ
804 Roberts Building
28 West Flagler Street
Miami, Florida 33130

MIAMI REVIEW — 371-4853 — 377-3721

in the

Supreme Court

of the

United States

OCTOBER TERM, 1975

NO. 75-1542

FRANCES OWEN WARRINER,
a/k/a FRANCES O. WARRINER,

Petitioner,

-vs-

MARILYN FERNANDEZ, an alleged free dealer, formerly known as MARILYN KAY THAL, a free dealer, and as the wife of PAUL GOODLEMAN; SAM BERGER, BEN GOULD, SIDNEY THAL, and MARIO F. FERNANDEZ, individually, and as Administratrix C.T.A. of the Estate of SAM KAY, and as the last officer and director of the dissolved Florida corporations LOAN STAR, INC., and PUBLIC INVESTMENT CORPORATION, INC.; and MARIO R. FERNANDEZ individually and as the husband of MARILYN FERNANDEZ; and MORRIS FOX, and his wife, JEAN FOX; and TITLE GUARANTEE COMPANY OF BALTIMORE, MARYLAND, licensed and organized to do business in the State of Florida.

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RESPONDENT'S BRIEF ON JURISDICTION
(MARILYN FERNANDEZ, an alleged free dealer, formerly known as MARILYN KAY THAL, a free dealer, and as the wife of PAUL GOODLEMAN; SAM BERGER, BEN GOULD, SIDNEY THAL, and MARIO R. FERNANDEZ, individually, and as Administratrix C.T.A. of the Estate of SAM KAY, and as the last officer and director of the dissolved Florida corporations LOAN STAR, INC. and PUBLIC INVESTMENT CORPORATION, INC.; and MARIO R. FERNANDEZ individually and as the husband of MARILYN FERNANDEZ).

STATEMENT OF THE CASE

The Supreme Court of Florida concluded that it had no jurisdiction in this matter and accordingly, this Petition for Writ of Certiorari is of necessity directed to the opinion of the District Court of Appeals, which Petitioner is estopped from pursuing this litigation by the following 25 years of adverse rulings:

1. *Fink v. Warriner*, a state foreclosure action filed in Monroe County, Florida on October 26, 1950, Case No. 12516, which resulted in a decision adverse to this petitioner, a conclusion which was appealed to the Supreme Court of Florida and dismissed by that Court on January 21, 1952.

2. *Warriner v. Fink*, Circuit Court of Monroe County, Florida, Case No. 12-1172, complaint for bill of review of the above case, which subsequently dismissed by the Supreme Court of Florida in 1953. 62 So.2d 913.

3. *Warriner v. Fink*, Circuit Court of Monroe County, Florida, Case No. 14-1187, complaint for bill of review, which was dismissed by the Circuit Court March 5, 1958. An appeal was taken to the Third District Court of Appeal and was quashed October 21, 1958. Rehearing was denied April 20, 1959. The order of the Third District Court of Appeal was taken to the Supreme Court of Florida Case No. 23395 and was dismissed by that Court on October 7, 1959.

4. *Warriner v. Fink*, filed in District Court for the Southern District of Florida, Case No. 10-395, seeking to upset the decree entered in the case set forth in paragraph

2, above. This action was dismissed by the United States District Court on February 28, 1961. An appeal was taken to the United States Court of Appeals and the Order of Dismissal was affirmed and is reported in 307 F.2d 933. Certiorari was denied by the Supreme Court of the United States, 372 U.S. 943.

5. *Warriner v. Fink*, Case No. 63-611 filed in the United States District Court for the Southern District of Florida. This action was dismissed by the United States District Court in March 1964.

6. *Fernandez v. Warriner*, a case filed in the Circuit Court of Monroe County, Florida to quiet title and for an injunction, in which the Defendant in that action, Petitioner here, filed a counterclaim predicated upon the same claims as litigated in the actions set out in paragraphs 1 through 5 above. A final order quieting the title of respondent, MARILYN FERNANDEZ, and dismissing petitioner's counterclaim was entered May 19, 1967. This order was appealed in Florida's Third District Court of Appeal and affirmed on May 21, 1968, 213 So.2d 328. A petition for rehearing was denied August 22, 1968. Petition for Certiorari was denied by the Supreme Court of Florida in March 1969, rehearing denied May 2, 1969, 225 So.2d 524. A Petition for Certiorari was filed in the Supreme Court of the United States on October 17, 1969, which was denied on January 17, 1970. Rehearing was denied on March 30, 1970.

7. *Warriner v. Fernandez*, the case Petitioner is now attempting to bring before this court, was filed as Case No. 74-137 in the Circuit Court of Monroe County, Florida to quiet title on the same parcel of land involved in the pre-

viously outlined cases. The complaint was dismissed by the Circuit Court on November 21, 1973. Appeal was taken to the Third District Court of Appeal, which concluded on February 25, 1975 that the petitioner was estopped from bringing the action because of the above outlined prior litigation in which all issues were eventually disposed of. 310 So.2d 375. The Florida Supreme Court denied a Petition for Writ of Certiorari on October 30, 1975 for lack of jurisdiction, rehearing denied January 28, 1976. 325 So.2d 5.

Now the Petitioner is seeking a Writ of Certiorari from the United States Supreme Court, this being the third attempt to get before this forum.

JURISDICTION

The petitioner claims jurisdiction over this cause via 28 U.S.C. 1254(1) and 28 U.S.C. 1257(3). 28 U.S.C. 1254 refers to certiorari from cases in the federal courts of appeals and is clearly not applicable to this cause.

The only cognizable claim under which petitioner could seek jurisdiction under 28 U.S.C. 1257(3) is for violation of procedural due process.

The cases outlined above speak for themselves. This petitioner has been a party to seven entirely separate law suits in which she has been noticed and heard and which have litigated each and every issue involved in her claim.

CONCLUSION

On the above basis, Respondent requests the Petition for Writ of Certiorari be denied.

Respectfully submitted,

WEINSOFF, WEINSOFF &
CARNEY, P.A.
Attorneys for Respondents
MARILYN FERNANDEZ and
MARIO FERNANDEZ
28 W. Flagler Street
804 Roberts Building
Miami, Florida 33130

BY:_____
IRVING WEINSOFF

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that 2 printed copies of the Respondent's (MARILYN FERNANDEZ, etc. and MARIO R. FERNANDEZ, etc.) Brief on Jurisdiction was mailed to FRANCES OWEN WARRINER, 2735 S.W. 10th Terrace, Apt. #3, Miami, Florida 33135, and KENNETH L. RYSKAMP, BOLLES, GOODWIN, RYSKAMP & WELCHER, P.A., 401 City National Bank Building, Miami, Florida 33130, Attorneys for Respondents, Fox and Title Guarantee Company of Maryland .

IRVING WEINSOFF

MIAMI REVIEW — MIAMI, FLORIDA

Supreme Court, U. S.
FILED
MAY 11 1976
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1975

NO. 75-1542

FRANCES OWEN WARRINER,
a/k/a FRANCES O. WARRINER,

Petitioner,

-vs-

MARILYN FERNANDEZ, an alleged free dealer, formerly known as MARILYN KAY THAL, a free dealer, and as the wife of PAUL GOODLEMAN; SAM BERGER, BEN GOULD, SIDNEY THAL, and MARIO R. FERNANDEZ, individually, and as Administratrix C.T.A. of the Estate of SAM KAY, and as the last officer and director of the dissolved Florida corporations LOAN STAR, INC., and PUBLIC INVESTMENT CORPORATION, INC.; and MARIO R. FERNANDEZ individually and as the husband of MARILYN FERNANDEZ; and MORRIS FOX, and his wife, JEAN FOX; and TITLE GUARANTEE COMPANY OF BALTIMORE, MARYLAND, licensed and organized to do business in the State of Florida,

Respondents.

RESPONDENTS' BRIEF ON JURISDICTION (MORRIS FOX, JEAN FOX and TITLE GUARANTEE COMPANY OF BALTIMORE)

BOLLES, GOODWIN, RYSKAMP
& WELCHER, P. A.
401 City National Bank Building
Miami, Florida 33130
Attorneys for Respondents
FOX and TITLE GUARANTEE
COMPANY OF
BALTIMORE, MARYLAND

MIAMI REVIEW — 371-4853 — 377-3721

in the

Supreme Court

of the

United States

OCTOBER TERM, 1975

NO. 75-1542

FRANCES OWEN WARRINER,
a/k/a FRANCES O. WARRINER,

Petitioner,

-vs-

MARILYN FERNANDEZ, an alleged free dealer, formerly known as MARILYN KAY THAL, a free dealer, and as the wife of PAUL GOODLEMAN; SAM BERGER, BEN GOULD, SIDNEY THAL, and MARIO R. FERNANDEZ, individually, and as Administratrix C.T.A. of the Estate of SAM KAY, and as the last officer and director of the dissolved Florida corporations LOAN STAR, INC., and PUBLIC INVESTMENT CORPORATION, INC.; and MARIO R. FERNANDEZ individually and as the husband of MARILYN FERNANDEZ; and MORRIS FOX, and his wife, JEAN FOX; and TITLE GUARANTEE COMPANY OF BALTIMORE, MARYLAND, licensed and organized to do business in the State of Florida,

Respondents.

RESPONDENTS' BRIEF ON JURISDICTION (MORRIS FOX, JEAN FOX and TITLE GUARANTEE COMPANY OF BALTIMORE)

For over 25 years the Petitioner has doggedly pursued her misguided attempts to seek relief in all the Florida state courts and Federal courts. Indeed, this Court has rejected jurisdiction on two prior occasions (372 U.S. 943, 396 U.S. 1021).

The Supreme Court of Florida concluded that it had no jurisdiction (App. 1) and accordingly, this petition for writ of certiorari is of necessity directed to the opinion of the District Court of Appeal, Third District (App. 3-5). This opinion does nothing more than conclude that the Petitioner is estopped from pursuing this litigation based upon 25 years of adverse rulings.

The Petitioner does not explain how this Court could possibly have jurisdiction of this cause. Although the Petitioner recites a litany of federal statutes and constitutional provisions (Brief, pp. 3-6), the argument sections of the brief consist of nothing more than a rambling, disconnected rehash of 25 years of unmeritorious litigation. Petitioner bases her main premise for this petition on this Court's decision in *Fuentes v. Shevin*, 407 U.S. 67, wherein this Court reinforced the well-recognized concept that procedural due process involves notice as well as a hearing. The *Fuentes* case involved the interpretation of prejudgment replevin statutes and has no relevance to the instant case wherein the Petitioner has been noticed and heard in every state and federal court for the past 25 years. This cause presents a classic example of abuse of judicial process by the Petitioner, who has received numerous sympathetic hearings from courts solicitous of the Petitioner's crusade *sans* legal advice.

The petition presented herein is so devoid of merit that further response by these Respondents would unduly burden this Court in its efforts to dispose of the substantial pressing matters now pending before the Court.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

BOLLES, GOODWIN, RYSKAMP
& WELCHER, P. A.
401 City National Bank Building
Miami, Florida 33130
Attorneys for Respondents
FOX and TITLE GUARANTEE
COMPANY OF
BALTIMORE, MARYLAND

KENNETH L. RYSKAMP

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that 2 printed copies of the Respondents' [Fox and Title Guarantee Company of Baltimore, Maryland] Brief on Jurisdiction was mailed to FRANCES OWEN WARRINER, 2735 S. W. 10th Terrace, Apt. #3, Miami, Florida 33135, and WEINSOFF, WEINSOFF & CARNEY, P. A., 804 Roberts Building, Miami, Florida 33130, this ——— day of May, 1976.

KENNETH L. RYSKAMP